
AGENCY
Civil Service hearing
Case No. –1-08

I. HEARING DATA

- (1) Appellant:
- (2) Appellant's Position:
- (3) Appellant's Representative:

- (4) County's Representative

- (5) Date of Appeal Hearing:

- (6) Action by the County:
- (7) Charges:

- (8) Witnesses:

- (9) Exhibits
- (10) HEARING OFFICER BARBARA KONG-BROWN

II. FACTUAL BACKGROUND

A. Grounds for Termination

The Grievant was a Supervising Clerk II for the _____ Agency assigned to the _____ Center. She began her employment there on January 22, 2002, and was on probation. On May 24, 2001 she was advised in writing that the Agency was terminating her employment effective June 8, 2001. The specific facts upon which the Agency based its termination is set forth in the letter as follows:

The reason for termination is your failure to satisfactorily complete your Probationary period due to unfitness for the position per Civil Service Rule 2104 (b), Unfitness for the position.

B. The Applicable Rules

1. Civil Service Commission Rule 2104(b) provides:

Each of the following may constitute a cause or reason for disciplinary action, but such action shall not be restricted to the particular causes listed:
(b) Unfitness for the position.

2. Civil Service Commission Rule 1824 provides: Separation, suspension, Reduction in Rank or Compensation Before Completion of a Probation

A department head may separate, suspend, or reduce in rank or compensation a probationer at any time during the period of probation, but a notice of such action and the reason thereof shall be concurrently sent by the department head to the probationer and the Commission at the time the action is taken. A copy of this Rule 1824 shall be attached to or included in the Notice of Separation, suspension or Reduction in Rank or Compensation.

A probationary employee so separated, suspended, or reduced in rank or compensation shall have no right to appeal, except as provided in Rule 1828, or unless he alleges that such action was due to his/her race, national origin, sex or political or religious opinions or affiliations. In the latter case, the appeal shall be in writing and shall be filed with the Commission

within five days of the notice of separation, suspension, reduction in rank or compensation, and shall set forth the factual basis for such allegation.

The Director shall thereafter present the appeal to the Commission. In the event that the Commission shall determine that the grounds upon which the appeal is taken are sufficiently clear and concrete to permit a hearing, the matter shall be set for a hearing to be conducted pursuant to Rule 2116, subsequent to which the Commission shall uphold or revoke the notice of separation.

The Grievant was a probationary employee at the time of her termination. There is no appeal from termination as a probationary employee unless the employee alleges that the termination was due to her race, national origin, sex, or political or religious opinions or affiliations. On May 29, 2001, Grievant requested an appeal in writing. On August 1, 2001, the Civil Service Commission granted her appeal of probationary termination based on allegations of discrimination.

III. ISSUE PRESENTED

The issue presented in this appeal is whether or not the Grievant's termination during her probation was due to her race, national origin, sex or political or religious opinions or affiliations.

IV. POSITION OF THE PARTIES

The Agency argues that procedurally this is not a good cause hearing and the hearing officer's jurisdiction is confined to a determination of whether the allegations of discrimination alleged by the Grievant have been proven by a preponderance of the evidence.

Regarding the allegations of discrimination the Agency states there is no factual basis to support a rational conclusion that Grievant was ever discriminated against on account of her race, national origin, sex or political or religious opinions or affiliations. There is not one scintilla of evidence to suggest that the Grievant was terminated due to any prohibited discriminatory animus or that the stated reasons for her termination were pretextual.

Instead, Grievant's own behavior as a supervisor, making unilateral decisions in a file room unit which was comprised of two supervisors, setting her own priorities which created dissension in the file room, overrode the chain of command, and refusal to work with the other file room supervisor, and her failure to accept constructive criticism and acknowledge her areas of weakness caused her to fail. Her supervisors met with her regarding her communication issues with other management employees as early as February 22, 2001, gave her an opportunity to go to conflict mediation concerning her issues with the other file room supervisor, and delayed the written evaluation in order to give appellant an opportunity to improve her performance. However, Grievant refused to sign the evaluation or acknowledge that she had any areas of deficiency, claiming she never had any notice of her weaknesses.

Regarding the timing of her evaluation, which Grievant asserts should have been received at three months, or April 22, 2001, the Agency states that had this been done Grievant would have been terminated by the Division Director. However, the program manager, intervened. There was no evidence introduced that employees are routinely given evaluations at the end of three months. Additionally, the evaluation was only delayed for a period of three weeks, and the delay was for her benefit, and there is

nothing to infer a discriminatory animus. Moreover, the recommendation at the time of the performance evaluation was to give Grievant an additional sixty days to further evaluate her progress.

Although Grievant disagrees with the comments contained in her performance evaluation she finally admitted during cross examination at the hearing that she did have notice of the communication issues between her and the other file room supervisor. Grievant confuses being on notice with disagreeing with what is being said. She believes that if she doesn't agree then she did not have notice of the issue. This theme was recurrent throughout her testimony during the hearing. Grievant stated:

Just because someone says something doesn't make it true. She could tell me a hundred times that it was me and I was a problem and that didn't make it true. That's why I asked for an investigation, and I have no further comments to elaborate on that. It's just going to go on around and around in a circle and my answer and my feelings or my state of mind is not going to change.

Grievant also contends that she is the victim of religious discrimination by because she is divorced. However, there was no evidence of anyone's religious affiliation or belief about divorce other than her immediate supervisor, who is Catholic and accepts the notion of divorce.

Grievant's behavior is manipulative, avoids the issues, and defensive. Regarding the issue of race discrimination, Grievant cites an incident where she overheard make a disparaging remark about the "Ghetto in their voice" referring to blacks. Grievant's primary concern about the remark was that management had not raised the issue with the co-supervisor, who is also Hispanic. This report was received by who is black, who decided not to pursue the report as secondhand hearsay.

Finally, even if it is determined that the Agency was in error in its performance evaluation and comments Grievant would be required to prove that the reasons cited in the performance evaluation were a pretext for discrimination prohibited under Rule 1824, and by her own admissions, she demonstrated a lack of credibility, and knew, prior to her termination, that she was not performing her duties as required by her supervisors. She was contemptuous of her supervisors, from her immediate supervisor to the Division Director, and refused to follow the management style of Ms. _____, Ms. _____, Ms. _____, and Ms. _____ because she disagreed with them. Thus, the appeal should be dismissed.

B. Grievant

Grievant states she was treated in a discriminatory manner by _____ and _____ and _____. She requested mediation because she realized she was being discriminated against and this action was taken prior to her termination. The allegations of discrimination were not made up after her termination.

Additionally, Grievant states she was never informed that she needed to improve her performance, there is no documented proof that she received any warning or chance to improve in any areas prior to being terminated, and that Management did not like her and fabricated information in her evaluation and she conspired with other supervisors to get rid of her. She states her witnesses proved that the reasons stated by Management were not true.

Grievant also asserts that _____ and _____ have a problem with her because she is divorced and Ms. _____ is Catholic and her religion looks down on divorce and _____ is a Seventh Day Adventist, which also looks down on divorce. After learning that she was divorced _____ formed an alliance against her. _____ is also Catholic.

Grievant further argues that the Division Director, discriminated against her because she sided with _____ because they are both African American.

Finally, Grievant states that of all the people involved in her firing, not one of them was Hispanic, and raises the possibility that this supports a pattern of discrimination against Hispanic people.

V. SUMMARY OF TESTIMONY

1. TESTIMONY OF _____

_____ testified about the procedure utilized in terminating Grievant, who was terminated during her probationary period. Ms. _____ was a _____. She worked in _____ for five and one months. Ms. _____ is African American. Ms. _____ was advised of her problems and given one month to improve. Ms. _____ as Supervising Clerk II gave Ms. _____ constant verbal feedback and gave her one memo. No three month evaluation was done.

Because Ms. _____ had worked for the Agency for twenty years, she was given the option of resigning instead of being terminated.

Hearing Officer's Comments

The Hearing Officer found this witness to be credible. Her testimony does not establish any disparate treatment or other discriminatory treatment of appellant.

2.. GRIEVANT

Grievant testified there is a format for evaluating employees and probationary employees should have more frequent evaluations. (A-1). She contested her performance review. (C-4). Regarding the comment about her need to improve in submitting timekeeping documents on a timely basis, Grievant stated that she did not want to harass her staff(A-5). Regarding the need for her exert more effort to work with peers harmoniously and that teamwork is essential for the success of the department as a whole Grievant t stated she was never counseled and she was the one who complained about her peer supervisor, _____.

Regarding the observation that Grievant has definite ideas of how things should be done in the unit and sometimes she is too aggressive and shows resistance when things are not handled her way, Grievant stated that _____, her peer supervisor, stated staff was required to bring in notes for absences and Grievant stated she was not going to ask her staff for medical notes. In response to the comment that "it is recommended that appellant sign-up for Management Training Sessions provided by the _____ Agency" Grievant responded: "No one told me to go to training , I wasn't told to attend retreat meetings, and _____ was going to a lot of meetings."

Regarding the comment that “Grievant must make improvement in the areas of communication, teamwork, diplomacy and dealing with peers in order to meet management expectations. Management staff has had several meetings with Grievant pertaining to these areas of concern” grievant stated she was not told about any problems with her peers and wants to see proof of meetings.

There was a strong criticism of Grievant concerning her lack of communication skills , that she needed to exercise tact in her communications with staff and management, that her supervisor and Program Manager had met with her several times to discuss ways to resolve issues with her peers, that daily meetings with her peer supervisor were essential to identify problems and agree on resolutions and Grievant refused to do so, and the issue was ongoing. Grievant was being counseled in this area. Grievant response to this criticism was that these were not issues of communication but was discrimination and she did not receive any counseling, and that the meetings that were set up were not set up for her but were due to conflict with her peer supervisor. . She stated no one else has daily meetings.

Regarding written communication, Grievant was criticized for sending e-mails to management in an unprofessional manner. She expects an immediate response when she expresses her concerns or gives suggestions about operations. She was advised that there may not be an immediate response to her e-mails. Grievant testified that it was her understanding that there was an urgent need for translators and passed her idea to because she just wanted to help and she did not expect two supervisors to get on her. She felt had turned on her so she went to see the Division Director.

Regarding the comment on the need for diplomacy and flexibility with other management staff , Grievant was advised that at times she thinks her concepts are superior and is reluctant to be open to other ideas and she needs to be flexible in working with other management staff and willing to listen. Grievant stated that the other managers did not get her to buy into their style and denies these comments. She also stated there were no dates or examples cited.

The performance review strongly criticized Grievant for her inability to work with her peer supervisor, and sent her to the conflict mediator to help resolve communication issues with management. She was advised that she would continue to be counseled and re-evaluated in sixty days, which would have been July 21, 2001.

Grievant was questioned about her refusal to sign the performance evaluation. She stated she did not refuse to sign it, that it was a surprise, and she wanted changes to the performance evaluation, her supervisor met with her and told her there were not going to be any changes and Grievant said she planned to complain to the E.E.O.C.

In Addendum to the performance evaluation, she changed the immediate supervisor's rating of "Needs Improvement" to "Unsatisfactory" because of her deficiencies in the area of communication, personal relationships and teamwork. Grievant's immediate supervisor states there were meetings with Grievant on February 14, 2001 and February 22, 2001 concerning communication and peer relationship issues. Grievant responded that she initiated these meetings which were not about her but because her peer supervisor was stalking her staff, that and her peer was the problem and Grievant was not the only one who did not get along with her peer supervisor,, that

others had a problem with her peer supervisor , and grievant was a team player. Grievant felt that her peer supervisor discriminated against young black women.

The Addendum states that tensions increased because of Grievant's inability to get along with her peer supervisor. Morale was low and the two units in the file room were receiving different instructions. Grievant rebuffed her peer's assistance and was offensive, made several changes without the knowledge and/or agreement of her peer. Grievant stated that morale was low in the unit before she got there and defended her unilateral actions on the following grounds:

1. Grievant was concerned about storing files under boxes without proper equipment as these boxes were heavy. There was no weight belt and no dolly and she didn't want her staff injured;
2. There was an issue concerning volumizing of files and complained. Grievant was concerned about possible injury to Ms. _____ arm because the files were too thick and heavy.

The Addendum notes that Grievant was unable to grasp the priorities of the department and plowed ahead on issues she considered to be important without considering the good of the department. The addendum notes that appellant admitted she needed to be more diplomatic. She removed case files off the desk of three staff members who got very upset. During the hearing Grievant denied touching files on the desks although she admitted that she tried to clear a working space for some files in order to make labels, which she stated was also evidence of effort to be a team player. She also stated that on March 7, 2001, she received an e-mail from her supervisor to her and

which stated she saw the two of them working together in the file room and she appreciated the team spirit which was exhibited.

Grievant testified that she e-mailed on April 6, 2001 to complain in writing because no one was listening, that everything changed after April 17, 2001, when they found out she was divorced.

Regarding the internal mediation effort, Grievant states she made a prior request for mediation with an internal mediator. After the mediation on May 2, 2001, the mediator, was going to recommend that Grievant and her peer supervisor join in the mediation. Although she signed the mediation agreement, agreeing to abide by a memorandum of May 4, 2001 regarding the April 24, 2001 meeting between her and her peer supervisor concerning ways to improve communication between the two supervisors Grievant testified at the hearing that she signed a blank form, inferring that she did not know what she signed. She also stated at the hearing that she was being forced to meet her peer supervisor and she wanted to revisit this issue because she thought it was harassment. Regarding meeting with the clerical units, including Grievant's clerical staff, the Agency stated that the clerical staff continued to feel the tension between the supervisors. Grievant responded that her staff was unhappy with the meeting and that the program manager left out information to portray her negatively.

The thrust of Grievant's testimony was that she was never informed about issues of her performance, and was not given the opportunity to change her behavior.

On cross examination the program director acknowledged that her memo regarding the May 2, 2001 meeting with Grievant and the peer supervisor mentioned the two file room units were doing things differently. During the meeting of February 13,

2001 with her, Grievant states she was not told there was a problem with her and the peer supervisor. However, by April 6, 2001, appellant's own e-mail admits there are communication issues between her and her peer supervisor, . Grievant stated she felt harassed, that _____, and _____ formed an alliance with each other. Grievant denied that she was told about communication issues between her and her peer supervisor because she did not agree that she was the issue. Although she was told about this issue she denied it because she did not agree that it was true.

Upon further cross examination, regarding the issue of diplomacy, Grievant stated she had no notice of this issue but she did not agree to _____ style of management. She stated: "They didn't get me to buy in." She would not agree to do what and wanted her to do because she felt they were wrong and she would not conform to their management style. She continued to state that she opposed the discrimination of and because she was divorced.

Regarding the performance evaluation, on cross examination, Grievant says she never said she would not sign the evaluation unless her supervisor made changes. She stated she would sign it and put in a rebuttal and follow up with the E.E.O.C. So the supervisor decided not to let her sign the evaluation. Although Grievant sent an e-mail to her supervisor on May 21, 2001, wherein she stated "I did not feel comfortable signing the evaluation form that was discussed on Friday, May 18, 2001," during the hearing Grievant stated she did not refuse to sign the evaluation on May 18, 2001, and the option to sign on May 21, 2001, came and went.

Hearing Officer's Comments

The Grievant's testimony was found to be unreliable. Although she claimed that she had no notice of her performance issues, the weight of the evidence leads to the contrary conclusion. During the hearing, Grievant demonstrated an unwillingness to acknowledge that she had notice of the communication issues between her and her co-supervisor. She confused being right or wrong with notice. If she did not agree with what was being said she denied that it was said. For example, she denied that she refused to sign her performance evaluation. The evidence clearly demonstrates that she refused to sign it (C9). Although she denied notice of issues with her peer supervisor, the record is replete with references to the communication issues between them and management's repeated efforts to address this issue. During the hearing Grievant repeatedly refused to acknowledge that she had been advised of such issues.

Based upon the Grievant's demeanor and her presentation I have concluded that she was not terminated for discrimination but for her inability to work with her peer supervisor, to meet and confer effectively about a resolution, and unwillingness to accept negative feedback about her shortcomings in that department. Grievant was unable to fit into the management culture of the department. As a new supervisor it was incumbent upon her to be flexible and cooperative with management especially since she was a co-supervisor of a unit. However, Grievant demonstrated a tendency to act precipitously which was apparent during the hearing and was quick to cast blame on others. This is not to say that the other supervisor did not have some responsibility for her own actions. However, Grievant clearly disliked her peer supervisor, thought she was incompetent and engaged in unproductive behavior, which created chaos, mistrust, uncertainty and instability within a few months. When confronted with these issues

Grievant denied any responsibility for her actions. She also failed to observe the chain of command in her communication with management. If she did not receive a quick answer about an issue she had to no qualms about going to the Division Director. This type of conduct does not foster good relations with ones' co-managers and could be viewed as manipulative and self-serving and disloyal. Throughout the hearing she claimed not to have notice and or/opportunity to correct deficiencies in her performance which flies in the face of the evidence. Her repeated denials were considered by me in concluding that she is not credible.

3. WITNESSS _____

Ms_____. worked under Grievant's supervision in the file room. She had worked in the unit for two years and one month prior to Grievant coming into the department. She testified that Grievant listened to the staff, asked for suggestions, and defended her staff. Morale was low when Grievant came in and she listened to them. People seemed happier when Grievant left than before she came to the department. She was knowledgeable about the issues.

Regarding the co-supervisor in the file room, the Witness testified that Grievant did not get along with her peer supervisor and but did not know why and could not recall any incidents. She stated that the peer supervisor had birthday celebrations for her unit and people in the other unit were excluded.

Hearing Officer's Comments

Witness No. 3 appeared to be a credible witness. Her testimony acknowledges that Grievant's staff respected her because she listened to them and there was tension

in the file room and and (other supervisors) did not get along. This testimony has no bearing on whether there was discrimination against appellant.

4. WITNESS

Witness No. 4 has been a mail room supervisor, Supervisor Clerk II, at the Agency since August 3, 1998. Although she does not work in the file room she interacts with the file room. She stated that Grievant listened to staff and their issues and problems and the supervisors talked about these issues. One ongoing issue involved cases that needed to be volumized.

The Witness also stated that there was a problem between the peer supervisor and an employee in the file room. The employee complained and was re-assigned to another supervisor. After Grievant came to the department she had problems with her peer supervisor. There was an incident between _____, an African American female and _____, a white female. After Grievant left the department there were problems with the peer supervisor as to how she wants to run the file room.

On April 6, 2001 the peer supervisor made a comment about identifying someone as being black on the telephone because you could hear “the ghetto” in their voice. Another supervisor heard this remark and said it was inappropriate. She told Grievant about the remark, who reported it to the program manager. .

Hearing Officer’s Comments

The hearing officer found this witness to be biased. She is a friend of the Grievant, and they have met prior to the hearing between thirty to forty times. Within the last thirty days prior to the hearing they had two meetings. The hearing officer also noted this

witness was carrying a binder of material for Grievant. She also acknowledged that she had discussed this case with other witnesses. Thus, her testimony as rejected in its entirety.

5. WITNESS _____

This Witness was the interim Assistant Agency Director of Department of Welfare to Work and testified that she reviewed Grievant's personnel file prior to the termination, and knew that numerous conferences were held with Grievant prior to her termination, that she was aware that signed the termination letter, and the action taken regarding her termination was correct. Probationary employees can be terminated within the first six months.

Hearing Officer's Comment

The hearing officer believes this witness testified in a forthright, credible manner. Her testimony confirms that probationary employees may be terminated at any time during the first six months.

6. WITNESS _____

This witness worked under Grievant's supervision for two months. She recalls an incident which occurred on March 21, 2001, two months after Grievant started working in her department. The incident involved her case files. The witness stated each employee is responsible for twenty-five case file numbers. She was ready to leave work and Grievant started to move her things round. She was upset because her cases were gone and she complained to the program manager. The program manager had a meeting with the witness and Grievant and she felt Grievant should have talked to her

about moving her files. Grievant apparently wanted to make some labels but should have talked to the witness first before moving her files.

Hearing Officer's Comments

This witness testified in a credible manner. Her testimony establishes that Grievant, who was new to the department, made unilateral changes without discussing them with her staff.

7. WITNESS

This witness is a supervisor in the mail room. She had limited contact with Grievant and there was a minimal relationship because she works in a different area. She was not in a position to comment on Grievant's work. She had difficulty communicating with the peer supervisor in the file room. Grievant learned how to make case labels. This witness was evaluated in her fifth month of probation and she is Catholic.

Hearing Officer's Comments

The hearing officer found this witness to be believable and she testified in a credible manner. Her testimony indicates there were communication issues between her and Grievant's co-supervisor. Also, she was evaluated within the same time frame as Grievant. However, the fact that there is a communication issue between this witness and the peer supervisor does not establish discrimination against Grievant.

8. WITNESS

This witness was a Temporary Clerk II and Grievant was her supervisor. She felt that Grievant made things better because things were not in order when Grievant came to the department. For example, there was a complaint about cases and volumizing.

She felt Grievant encouraged her and she felt like part of a team. She believes Grievant and her co-supervisor did not get along.

Hearing Officer's Comments

The hearing officer believes this witness presented as a fair objective witness. Her testimony confirms other testimony that Grievant did not get along with her co-supervisor, .

9. WITNESS _____

This witness was a clerk under Grievant's supervision. She stated that Grievant was an excellent supervisor at the _____ Center. Before Grievant came morale was low. Grievant was a motivator, and believed in core values and respect. The former supervisor in the department was _____, then _____. The witness stated she saw tension between Grievant and her peer supervisor. . The witness. worked under the peer supervisor and thought she was racist because of a comment in the office that made reference to "all of you haven't been on welfare?" the witness wrote a letter and asked to be transferred to a different supervisor. . She stated the peer supervisor was on probation at the time and does not think she was disciplined. On cross-examination this witness . admitted that welfare recipients were hired to work for the County.

The witness stated she did not notice any dissension between Grievant and her co-supervisor but there was dissension between the co-workers. There was an incident between the witness and an employee who was on staff. The co-supervisor . was not happy about the outcome. At staff meetings Grievant spoke most of the time and the co-supervisor was in the background and did not appear to be an authority figure. did not

make disparaging comments about the Grievant during meetings. The witness did not pay attention to anything the co-supervisor had to say. She was on maternity leave from June ,2000 until January, 2001. She was only back one week when Grievant came to the department.

During cross-examination the witness admitted that one half of the file room was doing things one way and the other half was doing thing their way. She stated Grievant did things according to the books and put together policies and procedures. The co-supervisor did things her way.

When the witness left the unit on maternity leave in June,200, Ms._____ was the file room supervisor. When the witness returned in January, 2001, Ms._____ was the supervisor. The cardex computers were different. There were no other differences. When Grievant came in she initiated new changes. She was respectful and she did something about the weight of the case folders. Regarding the issue of volumizing, the witness stated her unit doesn't do the volumizing. These files are sent to the _____ Clerks and have nothing to do with her unit. Both units complained about the size of case files , which are not supposed to exceed two and one half inches.

The witness also stated there was tension between management in the file room. Management was not working together and no one was singled out. the program manager, held two separate employee meetings but the witness did not recall what was said about the managers.

Hearing Officer's Comments

The hearing officer finds this witness's credibility to be an issue. She lied at the hearing when she was asked whether she had discussed this case with anyone prior to the hearing. She denied talking to anyone. However, another witness specifically stated she had discussed this matter with this witness and someone else prior to their attendance at the hearing. Additionally, this witness is biased, and appears to have an ax to grind against the co-supervisor. Therefore, I reject her entire testimony as lacking credibility.

Based on this witness' demeanor and the fact that she lied under oath, I have concluded that due to her own issues with, which occurred prior to Grievant's arrival in the department, and is not relevant to the issue of discrimination against Grievant, she was unable to testify in an objective, credible manner.

10. Witness

This witness was on disability when Grievant came to the department. She returned in March, 2001 but there was no modified duty she was sent home on workers' compensation. Grievant made an accommodation for her as she could not lift over three pounds due to a repetitive motion injury. She stamped envelopes and made labels. The witness stated Grievant appeared to be professional but she did not have much contact with her. This witness worked in the case bank and was not familiar with any problems in the file room before or after she went on leave.

Hearing Officer's Comments

This witness appeared to be credible but her testimony had no bearing on the issue of discrimination against Grievant..

11. WITNESS

This witness . is Director of Human Relations and Diversity Affairs for the Agency. He stated complaints can be filed in many ways. He recalls Grievant was in stress over her job due to conflict with a co-worker or supervisor. He did not recall if Grievant requested peer mediation but the issue arose. He spoke to staff and contacted Grievant. He recalls Grievant was on a team to develop diversity training curriculum in 1996 or 1997 and was on a team for conciliation on diversity.

Grievant did not file a complaint with his office. There is an internal procedure for handling discrimination complaints and the witness did not recall any request for investigation of any complaint by Grievant and there was no investigation of any complaint by Grievant.

Hearing Officer's Comments

This witness appeared to be a forthright, credible witness. His testimony establishes that Grievant did not file any complaint of discrimination with his department prior to her termination and no such complaint was investigated. Grievant was quite vocal about exercising her rights and was certainly knowledgeable about the availability of this procedure for filing internal complaints of discrimination. This witness' testimony provides no support for appellant's position of discrimination.

12. WITNESS _____

This witness did not have a lot of interaction or information about Grievant. She recalled that she chaired a meeting regarding 1931 clerical unit work and vaguely recalls meeting with the staff. She did not supervise Grievant but did have limited interaction with her. In general, if she asked Grievant for something, Grievant gave it to her.

Hearing Officer's Comments

This witness presented as a credible witness. However, her testimony has no bearing on the issue of the allegations of discrimination against Grievant.

13. WITNESS _____

This witness has been a Supervising Clerk III in the _____ Center since 1985. She interviewed Grievant for the job of Supervising Clerk II. She testified that communication, diplomacy, and teamwork were problems for Grievant. The witness noticed after the first few weeks during a conference Grievant's tone of voice and told her to "be tactful".

Regarding her performance evaluation, the witness noted that Grievant had trouble in submitting timekeeping documents on a timely basis. Time sheets were missing for some of her employees. The witness received a call about missing time sheets from Grievant's section, which happened more than once. So the witness said they should be turned in on a timely basis. If the sheets were not timely employees' checks would be delayed. The time sheets are due on Friday and the witness received a call after Friday for more than one employee.

With regard to the Attendance Summary form (A-5), the witness stated these are tools to be used by the supervisors to determine immediately if there are any attendance problems. The witness gave the form to all supervisors to use in case they have a problem with any of their employees regarding attendance.

Regarding the need to work with her peers, the witness stated there are four supervisors, two in the mail room and two in the file room. Grievant worked closely with all the other supervisors and there were communication problems between the two supervisors. The witness told them to talk to each other regarding volumizing of cases.

Cases were moved. Supervisors need to share information and everyone should know what is going on. On January 23, 2001, there was a retreat and recognition awards were given to employees. In February, 2001, the witness received an e-mail about using index cards for employee of the month. The peer supervisor used something different than what had been decided. Communication between the two supervisors began to fall apart and in February, the witness was aware that Grievant and the co-supervisor had different ideas so the witness had a meeting to talk about their issues. The witness acknowledged that e-mail communications between Grievant and her co-supervisor were professional on February 6, 2001 in regard to training, (A-6), February 14 and 15, 2001 in regard to Grievant and her co-supervisor meeting to discuss pulling of cases for the D.A.'s office (A-7).

However, on February 22, 2001, the witness held a conference with Grievant. Part of that discussion concerned Grievant's relationship with the co-supervisor and the need for her to improve her communication with the peer supervisor (C-11).

The witness testified further that further evidence of a conflict between the two supervisors was apparent as of April 19, 2001 over an issue of a name left off from a roster(A-8). The witness stated both parties are counseled when there is a communication issue and she advised Grievant of the communication problem between the two supervisors.

In Grievant's performance evaluation the witness commented that Grievant sometimes is too aggressive and shows resistance when things are not handled her way. As an example, the witness referred to an incident where Grievant moved case files from one shelf to another shelf. Grievant responded that she did not want her employees

to reach for cases because they were heavy and asked the witness to put her request in writing. The witness advised her that people did not know where the cases and employees came to the witness looking for their files. This was a unilateral action on Grievant's part. The witness stated that Grievant does things without telling others. This was a continuing problem. Grievant was demanding and uptight.

Regarding Grievant's performance evaluation the witness stated she met with Grievant to review it and Grievant was visibly upset and cried and said she was surprised at her evaluation. The witness informed Grievant that she was letting her know about the negatives so she could improve. Grievant threatened the witness and stated that she would not sign the evaluation unless the witness made changes, and if she did not make the changes Grievant would request an investigation.

In the witness' comments to Grievant's performance evaluation she stated that she will continue to counsel her and will evaluate Grievant in another sixty days.

The witness was questioned about a procedures manual which referenced management performance appraisals and the frequency of evaluations for probationary managers was at the end of the third and fifth months(A-10). She stated she may have combined the three month and five month probation evaluation for other supervisors.

Another issue which arose with Grievant concerned a request by Grievant for bi-lingual pay. After she spoke to her Grievant sent her an e-mail on April 4, 2001, wherein Grievant asked for bi-lingual pay(A-11). The witness informed Grievant there were no designated bilingual Supervising Clerk II positions and she would check to see if Grievant would be eligible for this pay.

Regarding the witness' religious beliefs, she testified she is Catholic and divorce is against the religion. Grievant did not tell Grievant that she was Catholic and the witness stated she did not know Grievant's religion or that she was divorced or that she was in divorce proceedings. She denied making any statement about sympathizing with Grievant about her divorce because she had no knowledge of her divorce. On cross-examination, the witness stated she has been in this country since 1968. Prior to that time she lived in the Philippines and there is no divorce there and she did not believe in divorce. After her arrival in the United States the witness' attitude about divorce changed and if she had a problem with her husband she would not hesitate to divorce him. The witness also denied holding bible studies at the lunch center and her opinion of Grievant did not change because Grievant was a single mother.

Regarding the peer supervisor, the witness stated she was not aware of any current conflict between her and the peer supervisor, and that the peer supervisor did not show contempt to employees. There had been a conflict which was resolved. They apologized and moved on. However, she testified that there was an incident concerning the peer supervisor and the Grievant over a worker compensation injury that someone had filed and Grievant had questions about this injury. The peer supervisor e-mailed the witness and Grievant and Grievant responded that she had nothing to report until the paperwork was completed and asked why she had to share information regarding the employee's appointments with the doctor. She felt the employee was being singled out and said she did not want to discuss the matter. The witness asked to meet with the two supervisors to discuss the matter and instead of complying with this request Grievant

went over the witness' head to complain to the program manager. The witness responded via e-mail that Grievant herself had initiated a conversation that an employee had hurt her wrist at work and the witness wanted to be sure the necessary reports were made on a timely basis. This was no different from the treatment of any other employee. (A-14).

Hearing Officer's Comments

The witness testified in a forthright, credible manner. It was apparent from her testimony that Grievant had a difficult time adjusting to the department, that she had some good ideas and suggestions but was overly aggressive in implementing her ideas and did not get other managers input or buy-in but made unilateral changes. This created conflict, especially in the file room where she was required to have close interaction with her peer supervisor, . As the new supervisor in the department Grievant needed to be more flexible but instead was contemptuous of her peer supervisor, and created dissension in the department which not only impacted the peer supervisor but also employees, when she made unilateral changes without consulting with her peer.

Also apparent was Grievant's style of bypassing the chain of command. If she was unhappy with a response or did not get a response within what she considered to be a reasonable time she went to the next level of management, without giving her immediate supervisors an opportunity to respond.

14. WITNESS

This witness . is the Division Director for the Agency. She interviewed Grievant for the Supervising Clerk II position and she hired Grievant on Ms.

_____’s recommendation. Grievant was hired as a probationary employee because she was not working for the Agency at the time of her hire.

Prior to Grievant t coming to the file room there were problems and the witness was sent to the file room to clean it up. After Grievant arrived, the problems escalated. There were complaints about files being moved by Grievant. There are almost forty thousand cases and there is an established procedure for handling files. The witness heard there was a safety issue because files were too thick. She stated Grievant should have discussed moving the cases around with management because it impacts several different sections of the department.

The witness testified that the two supervisors, Grievant and the co-supervisor, were not able to work together in the file room. There are too many people in the file room for one supervisor so there are two supervisors. She was advised that Grievant was having difficulty in communications and she asked the program manager, to work with Grievant to improve the situation. She was also advised that Grievant had difficulty making changes, that she was making unilateral changes in the file room without telling anyone, and that she had moved several files and people did not know where the files were. The witness understood that the supervisor met frequently with Grievant to discuss these issues.

Regarding the Grievant’s performance evaluation, the witness advised her staff to make sure there is documentation because there have been numerous communication issues. With regard to the timing of the evaluation, the witness stated that they are a little lax about providing evaluations for probationary employees on the three month and

six month time frames and evaluations may not be timely for problem as well as successful employees.

The witness also testified that Grievant sent an inappropriate e-mail to her which concerned Grievant's suggestion to refer clients with foreign language abilities in her caseload for temporary clerical work. Grievant sent an e-mail to her immediate supervisor on April 16, 2001, with a copy to the next level supervisor. Four days later, on April 20, 2001, she sent an e-mail to the witness, complaining that she had not gotten a response. (C-8). She also went to the witness' office. The witness thought the suggestion was good but the manner in which Grievant handled the communication was obnoxious. Grievant should have discussed this with her immediate supervisor and not bypass the normal chain of command. Grievant did not allow the supervisor sufficient time to respond and the matter was not a matter of such urgency that it needed an immediate response. It was unprofessional for Grievant to send this e-mail to the witness without first talking to her immediate supervisor. After she met with the Grievant,, the Grievant apologized for sending the e-mail to the witness. .

Another aspect of the bilingual pay issue concerned bi-lingual pay for Grievant's position as a Supervising Clerk II. The witness stated that this position was not designated or needed as there were sufficient Spanish-speaking clerks.

Grievant also sent an additional e-mail on April 6, 2001, to , with a copy to the witness, complaining about the issues with her co-supervisor and problems in the file room(A-17). The witness stated that staff receives training, and there are many reasons for duplicate files. The comment about FBU consists of two additional numbers and is not a life or death situation. Volumizing of cases will always be an issue and the file

room looks fine now. The file clerks don't do the volumizing, the telephone people do it. They handle 700 to 900 cases a month. There is no set time for when to send cases to closed files. These are ongoing issues that have been with discussed with staff and they will continue to work with staff.

With regard to Grievant's performance evaluation the witness was aware that Grievant had poor teamwork and escalated the morale situation in the file room. The witness spoke to her program manager and cautioned her about Grievant's evaluation as it was apparent she was not going to make her probation. She was aware that the program manager was preparing Grievant's evaluation. The witness conferred with the program manager, who said she wanted to salvage Grievant and call a mediator in to see if they could resolve the communication problem with the Grievant. The witness concurred and they decided to wait for the results of the mediation before finalizing Grievant's evaluation. The mediation occurred on May 7, 2001 and the witness issued Grievant's evaluation on May 18, 2001. At that time there was no intent to terminate Grievant. The witness did not believe the evaluation was bad. Grievant refused to sign the evaluation, wrote all over it and she doesn't recognize she has communication issues. The witness was surprised that Grievant would not sign the evaluation. The witness was not aware that Grievant had demanded that the evaluation be changed and told her immediate supervisor that she did not accept the problems discussed with her and she instructed the program manager to issue the addendum and terminate Grievant.(C-4). If Grievant had signed the performance evaluation she would have been given an additional sixty days to improve her performance.

Hearing Officer's Comments

The witness struck me as a fair-minded, professional who testified in a very credible manner. As the ultimate supervisor in that department, she was fully aware of management's issues with Grievant and worked closely with her managers to ensure that Grievant was afforded full opportunity to be advised of her shortcomings in her performance, and to be given the opportunity to improve. Even when she knew that Grievant would most likely not pass her probation the witness allowed her managers to give Grievant an additional opportunity to improve her performance, agreed to delay the evaluation pending the mediation to see if the communication issues could be resolved, and even as late as May 18, 2001, was in agreement that Grievant would be given an additional sixty days to July 18,2001, to improve her deficiencies.

However, when Grievant refused to sign her evaluation or acknowledge her deficiencies the witness was compelled to terminate her.

15. WITNESS

The witness has been employed by the Agency for twenty-four years and has been program manager for several years. She was aware of the issues with Grievant because she had to personally intervene on several occasions. Grievant came into the department and felt cases were not being volumized but did not speak to her co-supervisor in the file room or her immediate supervisor before she removed case files and the case file workers were upset. Case bank clerks went to see the witness to complain.. Grievant also removed files from a shelf and wanted to change color tags to a different color.

The witness also stated that Grievant told the case bank not to deliver cases to the clerks and advised her staff not to use Cardex. Grievant also told the witness she could not work with her co-supervisor, , and told her staff not ask any questions and to get all

their instructions only from Grievant. In summary, Grievant tried to make unilateral changes in file room practice without talking to her co-supervisor or her immediate supervisor. Consequently, the two file room units were getting different instructions from their supervisors.

The witness also noticed soon after Grievant's arrival into the department that it was apparent that Grievant and her co-supervisor did not get along. On February 13, 2001, there was a meeting and there were issues with the staff. On February 14, 2001, there was a second meeting with supervisors and there was a discussions of the issues between Grievant and her co-supervisor. They had different management styles and had to learn how to get along. On February 22, 2001, the witness had a meeting with Grievant to discuss her communication issues. Another example of Grievant's communication issue with her co-supervisor occurred during a staff meeting. The witness met with all the clerks and Grievant's co-supervisor made a comment to her. Grievant became offensive and said she was not a new supervisor, inferring she did not welcome the co-supervisor's comments. Grievant made several changes without the knowledge and/ or agreement of her peer. Several meetings were set up between Grievant and her co-supervisor concerning their communication issues.

The witness stated she had many interventions with Grievant . She met with her on April 20,2001 and wanted to know how the meeting of April 17, 2001, had gone. Grievant was also instructed to meet with her co-supervisor long before April 17, 2001. That meeting was not productive. During the meeting of April 20, 2001, the Grievant emphasized the need for the department to present a united front and she needed Grievant and her co-supervisor to act like a professional and Grievant replied that she could not do

that. After this meeting Grievant wrote an e-mail on April 23, 2001(C-10) to document her version of the meeting. The witness thought Grievant felt she was being threatened . The witness requested mediation after this meeting.

The conflict between the co-supervisors resulted in a meeting on April 24, 2001,. The predicate for this meeting was the e-mail sent by Grievant t to the witness on April 6, 2001, when she was on vacation. The witness confirmed the agreement between Grievant and her co-supervisor on how they would improve communication. This was documented via an e-mail on May 4, 2001. (C-5). Grievant violated the agreement the next day, April 25, 2001, when she advised the witness she could not meet with her co-supervisor.

In response to Grievant's complaint about the comment the peer supervisor made regarding telephone calls where she could tell someone was African American by the "ghetto" in their voice, the witness , who is African-American, stated that this was hearsay and spoke to the immediate supervisor about this incident. The witness stated that Grievant told her another supervisor had overheard this remark. The witness believed this to be hearsay and no one came forward so she did not deem it necessary to pursue the matter. The witness was aware that the evaluation was due April 22, 2001. She consulted with the Division Director who advised her that Grievant would probably not make her probation. However, she stated she did not want to terminate Grievant and wanted to see if this issue could be mediated because she wanted to give Grievant the opportunity to be successful. The Division Director concurred. If the evaluation had been issued on April 22, 2001, Grievant would have been terminated. So, on May 18, 2001, when Grievant's evaluation was issued by the immediate supervisor , the plan was

to give Grievant an additional sixty days to improve her performance. However, when the witness saw Grievant's e-mail of May 21, 2001, it was the straw that broke the camel's back. She discussed the situation with the Division Director and Grievant's immediate supervisor and wrote the addendum of May 24, 2001, changing the performance evaluation from "needs improvement" to "unsatisfactory" and recommended termination.

Hearing Officer's Comments

The hearing officer found this witness to very credible. She exercised a lot of patience in dealing with Grievant. Grievant continued to go around her immediate supervisor and this witness intervened on several occasions. It was clear that within a short period of time, Grievant had created an untenable work environment in her department due to her inability to get along with her peers.

The witness corroborated the testimony of the immediate supervisor, and the ultimate supervisor, . She made every effort to work with Grievant who was never able to realize her own deficiencies.

VI. DISCUSSION AND FINDINGS OF FACT

Based on the evidence as a whole, it is clear to the hearing officer that Grievant's termination was not due to any discrimination by the Agency. Grievant was provided wide latitude during a hearing which lasted three days to present testimony and witnesses for her termination. There is no basis to sustain Grievant's position and there is no evidence that establishes that the Agency's concerns were a pretext for some discriminatory purpose and the weight of the evidence supports the Agency's decision.

The issue presented is whether or not Grievant's termination was due to discrimination as defined in Civil Service Commission Rule 1824, which states there is no appeal for probationary employees unless there was discrimination on the basis of race, national origin, sex or religious or political opinions or affiliation. Grievant did not sustain her burden of proof on her allegations of discrimination. There was no evidence presented by Grievant concerning sex discrimination. With regard to race, the only evidence she presented concerned two incidents with her co-supervisor, who allegedly made a comment about recognizing someone African American on the telephone by the "ghetto" in their voice. The program manager, an African American, stated this comment was not investigated because it was hearsay and no one else came forward. The second incident involved Grievant's employee, , who Grievant said her co-supervisor singled out because she was African American. Even if these allegations were proven to be true which they were not, it does not evidence any discrimination against Grievant, as these allegations were not directed at her, and she is not African American.

Additionally, Grievant's peer supervisor and upper management were all women of color. The Division Director and Program Manager . are African-American, and the peer supervisor is Hispanic.

Regarding national origin, Grievant's communication issues were with her peer and co-supervisor, who was also Hispanic. Even if management favored the peer supervisor over Grievant, which was not proven during the hearing, both appellant and her co-supervisor were of the same national origin, Hispanic, so Grievant failed to sustain her burden of proof in this regard.

With regard to the allegation of discrimination due to religious beliefs Grievant's position that her supervisors formed an alliance against her because she is divorced, was not borne out by a shred of evidence. There was no evidence elicited during the hearing about the religious opinions of the supervisors or how they feel about divorce. The immediate supervisor who testified she is Catholic, did not know what Grievant's religion was and stated she did not know that Grievant was divorced and she herself, after being in this country, for over thirty years, believes if she has a problem with her husband, would not hesitate to get a divorce.

Grievant claimed that everything changed after April 17, 2001, when everyone found out she was divorced via an e-mail she sent on April 17, 2001 saying she had a Family Court Case and was unable to attend a meeting on April 18, 2001. There is no evidence to support this conclusion. Rather, the evidence in the record establishes that within two months after arriving in the department, Grievant continually engaged in behavior designed to sabotage the effectiveness of the department, and that the conflict between Grievant and her peer supervisor escalated and had reached a boiling point. Subsequent meetings during this time period proved futile. Grievant's e-mail on April 23, 2001 confirmed her inability to follow management direction concerning daily meetings with her co-supervisor, and her refusal to conform to her peer supervisor's management style and how work in the file room is conducted. The point is not whether or not her management style or Grievant's management style was better. The issue was that there was a difference in their management styles and Grievant refused to engage in a productive process to resolve conflict and chose to fire off e-mails that were offensive and negative. There was no attempt in this e-mail to offer any constructive suggestions

for conflict resolution. Additionally, during the hearing Grievant also testified she would not conform to the management style of the department.

It is unfortunate that the Grievant was terminated from employment during her probation. However, it is a situation that is one of her own making. As a supervisor new to the department it was essential for her to fit into the department and to work collaboratively with her peer supervisor as well as her higher supervisors. She alienated upper management by causing problems almost from the beginning of her employment in the department. Within a few weeks it became evident that she was unable to work with her peer supervisor and instead of trying to find a way to resolve this conflict, she engaged in behavior which was calculated to make her peer supervisor look bad, either to staff or to upper management. Grievant certainly appeared to have inspired loyalty at least from some of her staff but management of subordinates is only one aspect of being an effective manager and she failed dismally in the area of peer relationships, teamwork and peer communications.

Additionally, Grievant's communications via the barrage of blistering e-mails to her peer supervisor and upper management was unacceptable. These communications portrayed others in a bad light and were written to undermine the chain of command.

Moreover, in reviewing the mass of documents presented during the hearing there was no evidence presented that Grievant filed a complaint of discrimination prior to her termination. The mediation scheduled for May 7, 2001, was a mediation concerning peer conflict and there was no mention anywhere in the record of alleged discrimination against Grievant. Additionally, the Director of Diversity testified that there was no complaint filed by Grievant, alleging discrimination or anything else. This evidence is

contrary to Grievant's testimony that she filed a discrimination complaint and asked for an investigation.

In the end, it was Grievant's inability to realize her shortcoming that caused her downfall. She was in denial about being advised of her deficiencies and/or the opportunity to correct them. During the hearing Grievant repeatedly demonstrated her inability or unwillingness to understand that management advised her about her deficiencies, and if she didn't agree with what was being said then it wasn't said.

Further erosion into her credibility concerned Grievant's statement that she did not refuse to sign her performance evaluation. The evidence is overwhelmingly to the contrary. Finally, Grievant botched the lifeline that was handed to her when she wrote the May 21, 2001 e-mail, claiming the negatives in her performance evaluation was all new and a surprise to her. The evidence clearly establishes management had issues with her communication style, peer relationship, and team work and advised her of these issues and the need to improve. This was the straw that broke the camel's back and she alienated her last supporter, , who up until then, wanted to salvage her.

It is unfortunate that Grievant never took ownership of her shortcomings during her very short tenure at the Center. No one questioned that she had some good suggestions and ideas to improve the file room nor that the file room had on going issues with morale, and improvement needed in handling the files. However, it was Grievant's abrasive style and her quickness to criticize others, ranging from her peer supervisor, to her immediate supervisor, to her supervisor's supervisor, and refusal to work collaboratively as a team, which caused her demise.

Based upon the evidence, the hearing officer therefore makes the following findings of fact:

1. Grievant was terminated as a Supervising Clerk II , _____ Agency , _____ Center, during probation on May 24, 2001, effective June 8, 2001, pursuant to Civil Service Commission Rule 2104), Unfitness for the position.

2. There is no right to appeal from termination as a probationary employee unless the employee alleges that the actions was due to her race, national origin, sex or political or religious opinions or affiliations.

3. Grievant made a timely appeal to the Civil Service Commission and was granted a hearing before this Hearing officer, at which time she was given full opportunity to call witnesses on her own behalf and to cross-examine witnesses presented by the Agency . All exhibits received into evidence are described and attached to this Decision and Recommendation. The hearing was conducted in accordance with the rules prescribed by the Civil Service Commission.

4. Having heard all of the evidence presented and having observed the demeanor and manner of the witnesses while testifying, I find that termination during probation was not due to her race, national origin, sex or political or religious opinions or affiliations.

RECOMMENDATION

Based upon the evidence presented during this appeal hearing, it is this Hearing Officer's recommendation that the Civil Service Commission sustain the termination of

Grievant during probation for unfitness for the position pursuant to Civil Service
Commission Rule 2104(b).

Dated: May 16, 2002

Respectfully submitted,

BARBARA KONG-BROWN, ESQ.

Hearing Officer

